

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3223

IN THE MATTER OF:

Served August 25, 1988

Application of AMERICAN COACH)
LINES, INC., for a Certificate of)
Public Convenience and Necessity,)
Charter Operations)

Case No. AP-87-20

Application of AMERICAN COACH)
LINES, INC., a District of Columbia)
Corporation, to Acquire Control of)
AMERICAN COACH LINES, INC., a)
Maryland Corporation)

Case No. AP-87-27

By motion filed January 15, 1988, and supplemented May 25, 1988, the Office of General Counsel (OGC) requests that the Commission summarily deny the application of American Coach Lines, Inc., a District of Columbia corporation (ACL-DC), for a certificate of public convenience and necessity to conduct general charter operations between points in the Metropolitan District. It is OGC's position that ACL-DC lacks the requisite compliance fitness prescribed by the Compact, Title II, Article XII, Section 4(b) as a necessary element to obtaining a certificate. As grounds for this position, OGC relies on an affidavit regarding certain transportation performed on January 7, 1988, and the report of SG Associates, Inc., entitled "Inspection of Dispatch and Charter Records of American Coach Lines, Inc.," submitted to the Commission on April 1, 1988, in Case No. MP-87-08, Investigation of Compliance of American Coach Lines, Inc.

The affidavit was filed with the initial motion. Affiant attests that on January 7, 1988, ACL-DC transported him and others for hire on a round-trip sightseeing tour between points in the District of Columbia. The report was filed with the Supplement to Motion for Summary Judgment. OGC asserts that the report and appendices thereto prove that during the period December 11, 1987, through March 9, 1988, ACL-DC regularly transported passengers in charter and special operations between points in the Metropolitan District in contravention of Order Nos. 3079 and 3099, served October 9, 1987, and December 4, 1987, respectively, and despite the Order of the United States Court of Appeals for the District of Columbia Circuit refusing to stay those orders pending appeal. In essence OGC argues that if ACL-DC refuses to comply with the Compact and Commission orders when its behavior is being closely monitored as the result of an open compliance investigation and during the pendency of an application proceeding, it cannot be expected to comply with the Compact and Commission rules, regulations, and orders in the future.

In response to the initial motion, ACL-DC conceded the facts of the affidavit but opposed a grant of the motion on the ground that the public interest would not be served by a denial based on what it described as a single incident. An affidavit of applicant's president, Frank Sherman, Jr., was also introduced in which Mr. Sherman stated he believed the move was authorized by the Interstate Commerce Commission (ICC) because the vehicle crossed a state line within the Metropolitan District later that same day, albeit with different passengers. Mr. Sherman appears to state in his affidavit that his belief was formed based on the written advice of counsel. However, Mr. Sherman concedes that such was not counsel's meaning.

ACL-DC supplemented its response to the initial Motion for Summary Judgment. */ In its supplement, ACL-DC asserts that the Motion for Summary Judgment represents merely a desire on the part of OGC to punish ACL-DC for asserting its right to due process. In support of its accusation, ACL-DC makes additional gratuitous assertions regarding the bases of Order Nos. 3079 and 3099, both Commission orders, and OGC's opinion of the 90-day suspension. ACL-DC's legal support consists of the assertion that the Court in Baltimore and Annapolis Railroad Co. v. Washington Metropolitan Area Transit Commission, 642 F.2d 1365 (D.C. Cir. 1980) resolved all issues regarding operations of the type which ACL-DC here raises. ACL-DC further cites Service Storage and Transfer Co. v. Virginia, 359 U.S. 171, 177-178 (1959) for the proposition that "... a declaratory order proceeding initiated with the Interstate Commerce Commission is the proper method for determining disputes over jurisdictions between federal and state regulatory agencies when services are conducted pursuant to authority issued by the federal agency."

ACL-DC requested oral argument before the full Commission on the matter of the Motion for Summary Judgment. OGC neither supported nor opposed ACL-DC's request. Gold Line, Inc., and National Coach Works, Inc., protestants in the above-styled consolidated proceeding, opposed ACL-DC's request as wasteful of time and resources and making no contribution toward resolution of the issue posed by the Motion for Summary Judgment.

In supporting OGC's motion, protestants take the position that "... ACL's defiance of the Orders of the Commission and the Court compels a finding of total unfitness in the proceeding." Protestants point out that the proceedings which culminated in Order Nos. 3079 and 3099 fit a pattern of behavior followed by ACL-DC for over three years. In protestants' words,

Lengthy proceedings are conducted and a massive record establishing deliberate unlawful service is compiled. The Commission then issues a strong report

*/ In response to OGC's Supplement to Motion for Summary Judgment, ACL-DC denied any wrongdoing but advised that it did not contest the motion.

and orders ACL to cease and desist its unlawful service. ACL then proceeds to ignore and defy the order; and continues to operate unlawfully without even a pause. This occurred in proceedings decided in 1985 and 1986. Here WMATC in a formal complaint and investigation proceeding has issued Orders requiring that ACL cease all transportation within the Metropolitan District and the Court has refused to stay the effectiveness of such Orders. Once again, however, ACL has not stopped operating for even a day; and now wants to relitigate the entire matter in yet another lengthy application proceeding while continuing to operate unlawfully. It is submitted that this cannot be permitted by this Agency; and that summary judgement denying the application for lack of fitness should be entered forthwith.

We quote protestants at such length because their presentation of the matter conveys the flavor of repeated unsuccessful attempts by the Commission to rehabilitate ACL-DC in order that it complies with the Compact; Commission rules, regulations, and orders; and the terms of its own WMATC Certificate No. 1. Taking official notice of these attempts which are embodied in Case Nos. AP-85-08, AP-85-36, and MP-87-08, we find that the evidence indeed indicates that ACL-DC's operations remain unchanged despite Commission orders in each case, the intent of which was to acknowledge that there had been a compliance problem; to state the Commission's position on the matter unambiguously; and to create a situation within which ACL-DC could purge itself of any violations thereby placing itself in a position to establish its compliance fitness as required by the Compact, Title II, Article XII, Section 4(b) in order to obtain expanded operating authority.

This has not occurred. Rather, after reviewing the report of SG Associates, Inc., in the context of Case No. MP-87-08, we have by order issued this date pursuant to the Compact, Title II, Article XII, Section 4(g) revoked WMATC Certificate No. 1 held by ACL-DC. The revocation was occasioned by a finding that ACL-DC had failed to comply with the Compact, Title II, Article XII, Section 4(a); with the terms of its certificate; and with a Commission order directing compliance thereto. ACL-DC's assertion that all operations performed during the suspension period were authorized by ICC Certificate No. MC-149076 and ACL-DC's reliance on Service Storage and Transfer Co. v. Virginia, supra, appear to us to be without merit. This is not a situation involving disagreement between two regulatory bodies. The ICC has by order stated that ACL-DC's ICC Certificate does not authorize charter or special operations between points in the Metropolitan District. This Commission has by order stated that ACL-DC is not authorized by virtue of WMATC Certificate No. 1 to conduct general charter operations between points in the Metropolitan District, has suspended ACL-DC's WMATC Certificate No. 1 for 90 days, and has directed that ACL-DC cease operations between points in the Metropolitan District except as authorized. The United States Court of Appeals for the District of

Columbia Circuit has refused to stay the orders accomplishing the suspension and direction to cease and desist. ACL-DC's position rests entirely on the fact that it has filed a Petition for Declaratory Order asking the ICC to interpret its Certificate No. MC-149076. In short ACL-DC asks the Commission to refuse to give effect to existing ICC orders interpreting an ICC certificate on the grounds that the ICC may at some indeterminate date reverse its current interpretation. As we stated in Order No. 3000, served April 17, 1987, "[a]lthough the ICC has primary jurisdiction to interpret its certificates, this Commission has primary jurisdiction to interpret and, of course, enforce its enabling legislation." See also Order Nos. 2995 and 2984, served April 3, 1987, and March 3, 1987, respectively.

We turn now to a discussion of ACL-DC's request for oral argument. In an effort to obtain a complete picture of ACL-DC's operations during the suspension period, we have refrained from acting on the motions before us until now. It would seem, in light of ACL-DC's more recent statement that it does not object to the granting of the Motion for Summary Judgment, that ACL-DC's request for oral argument is moot. For that reason, the request will be dismissed without prejudice. ACL-DC may renew the request with any Petition for Reconsideration of this order which it files.

Order No. 3094, served November 18, 1987, consolidated Case No. AP-87-20, Application of American Coach Lines, Inc., for a Certificate of Public Convenience and Necessity, Charter Operations with Case No. AP-87-27, Application of American Coach Lines, Inc., a District of Columbia Corporation, to Acquire Control of American Coach Lines, Inc., a Maryland Corporation. Order No. 3222, served August 25, 1988, revoked WMATC Certificate No. 1 held by ACL-DC. American Coach Lines, Inc., the Maryland corporation, does not now and has never held any operating authority from this Commission. Title II, Article XII, Section 12 of the Compact mandates Commission approval of mergers between two carriers when one operates within the Metropolitan District. Title II, Article XII, Section 4(a) of the Compact requires that any carrier subject to the Compact operating within the Metropolitan District hold a certificate of public convenience and necessity from the Commission. Neither carrier being enabled legally to transport passengers between points in the Metropolitan District, the application (and ACL-DC's Motion to Dismiss Application for Lack of Jurisdiction) has become moot.


THEREFORE, IT IS ORDERED:

1. That the Motion for Summary Judgment is hereby granted.
2. That the application of American Coach Lines, Inc., a District of Columbia corporation, for a certificate of public convenience and necessity is hereby denied in its entirety.
3. That the Motion for Oral Argument is hereby denied, without prejudice, as moot.

4. That the application of American Coach Lines, Inc., a District of Columbia corporation, to acquire control of American Coach Lines, Inc., a Maryland corporation, is hereby denied as moot.

5. That the motion of American Coach Lines, Inc., a District of Columbia corporation, for dismissal of its application to acquire control of American Coach Lines, Inc., a Maryland corporation, is hereby denied as moot.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:


William H. McGilvery
Executive Director